Chemical analysis established that the contents of the bags were raw opium.

On this evidence which was largely undisputed by the defence, counsel for the accused submitted that the accused had no awareness of the nature of the goods found near him and therefore the case against him had not been proved, no presumption could be raised against him and he was entitled to be acquitted. This submission found favour with the learned president. In his grounds of decision, the learned president held that:—

". . . . there was no evidence at all that the accused had in his custody or under his control consciously or otherwise of the two bags. It was no doubt presumable what being found in that position the accused must be the possessor of the two bags but since these two bags were found there while the accused was fast asleep it was also equally presumable that someone else might have placed those two bags there without the knowledge of the accused."

Later on, he went on to say:—

"As far as I am aware of there is no law to say or presume that a sleeping man is conscious of anything at all."

In his view, where another inference other than the adverse one could be drawn and it was an inference favourable to the accused, he must draw this favourable inference. He accordingly acquitted the accused, without calling on his defence.

Before me, learned counsel for the respondent sought to maintain the acquittal and the reasoning of the learned president.

In my view his argument is fallacious. Carried to its logical conclusion, it would involve that in the case of a person who was wide-awake and was in such proximity and in such circumstances to dangerous drugs as to lead otherwise to the reasonable inference of custody or possession within the meaning of the Ordinance the prosecution would have to prove that at the moment of detection the person was consciously and actively aware of his custody or possession. In other words, mental absenteeism at the pertinent time was sufficient as a defence. To say that a person otherwise in custody or possession loses the awareness of his custody or possession when he falls asleep is, in my opinion and with respect, to misunderstand or to misinterpret the physiological relationship between sleep and consciousness.

As for the suggestion that the bags of opium could have been put on or next to the sleeping accused, that is, with respect, in the absence of any evidence of any one nearby with access to the sleeping-berth, a defence for the accused to put up and not be anticipated, least of all, by the trial president.

The appeal must be allowed. The order of acquittal is set aside. Since the president, who heard the case, is no longer functioning as president, the order will be for a trial *de novo* before another president.

Appeal allowed.

Solicitors: *Soo Wai Sun & Co.*

ANG TECK KIAT v. SAPIAH BINTE ALI & ANOR.

[A.C.J. (Pawan Ahmad J.) February 22, 1969]
[Malacca — Civil Appeal No. 3 of 1967]

Landlord and Tenant — Land let as vacant land, but buildings subsequently erected thereon — Whether "premises" within the meaning of the Control of Rent Ordinance, 1956 — Contract of tenancy specifying event upon which tenancy is to be determined — Whether notice to quit required before application for possession — Control of Rent Ordinance, 1956, s. 12(1).

The appellant had let land, on which a temporary building had been built, to one Mat bin Bidin under a written agreement which provided that on the death of Mat bin Bidin, his heirs. executors, administrators or assigns must quit the land except at the discretion of the landowner. After the death of Mat bin Bidin the appellant claimed that the tenancy expired on the date of the death and he claimed possession of the land.

Held, dismissing the appeal: (1) the temporary building falls within the definition of "premises" under the Control of Rent Ordinance, 1956, and was therefore protected by the Ordinance;

(2) as the appellant had failed to take any steps required of him under section 12(1)(*l*) of the Control of Rent Ordinance, 1956, he could not succeed in a claim for possession of the land.

Case referred to:—

(1) *Veerapillai* v. *Oci Swee Hoe* [1961] M.L.J. 260 at p. 263.

MAGISTRATE'S CIVIL APPEAL.

H.B. Ball for the appellant.

John Ang Soon Hoe for the respondents.

Cur. Adv. Vult.

Pawan Ahmad J.: This is an appeal against the decision of the learned president of the Sessions, Court at Malacca dismissing the appellant's claim for recovery of possession of land and consequential reliefs.

Briefly, the facts are as follows. The appellant became the registered owner of the land in question on 4th September, 1944 and on that date there was already a temporary building on the land belonging to and occupied by one Mat bin Bidin. On 25th April, 1960 the appellant and Mat bin Bidin entered into a written agreement, Exhibit P.1. Clause 2 of the aforesaid agreement states, and I quote:—

"On the death of Enche Mat bin Bidin, his heirs, executors, administrators or assigns must quit the land

except at the discretion of the said land owner without paying any compensation to his heirs, executors, administrators or assigns."

Notwithstanding this agreement the said temporary building was transferred to and registered in the name of the 2nd respondent as owner on 3rd November, 1964. Mat bin Bidin died on 3rd February, 1964 and the appellant claimed that the tenancy expired on that date by reason of clause 2 of P.1. The appellant then sent a letter dated 28th February, 1964 to the 1st respondent who was in occupation of the said temporary building informing her that the tenancy expired with the death of Mat bin Bidin on 3rd February, 1964 and she was to remove the said temporary building without any compensation under the terms of P.1. Both the 1st and 2nd respondents did not pay any heed to this letter and so the appellant filed this suit.

At the trial both parties agreed that there were only two issues to be tried, namely,

(1) Whether the Control of Rent Ordinance, 1956 applies.

(2) Whether the defendants have any tenancy at all of the premises.

It is the contention of the appellant that this claim does not come within the purview of the Control of Rent Ordinance, 1956. The appellant further contends that the tenancy automatically ceased or became void upon the death of Mat bin Bidin on 3rd February, 1964 by virtue of clause 2 of P.1. In my view the burden of proof in this case has to be discharged by the appellant. In support of the appellant's claim his counsel referred to *Woodfall* on Landlord & Tenant, 26th Edition, page 982 at paragraph 2130 and I quote:—

"If a term is granted, which in the lease is limited by the happening of a certain event, the term will end on the happening of the event without any notice to quit being required."

In my view this argument is only true at common law because the learned author at page 981, paragraph 2129 states:—

"Where the contract of tenancy specifies a term or event upon which the tenancy is to determine, no notice to quit is necessary at common law."

The appellant's case is therefore based on common law and not on the Control of Rent Ordinance, 1956.

There is no direct evidence when the temporary building was erected but I think it can safely be inferred from the facts that this building was erected by Mat bin Bidin prior to 1944 on vacant land belonging to another person and subsequently on 4th September, 1944 the appellant bought this land subject to the rights of Mat bin Bidin. In *Veerapillai* v. *Ooi Swee Hoe* [1] it was held by Rigby J., and I quote:—

". . . . I am now of the opinion, and I so hold, that where land is originally let as vacant land and buildings of a temporary character are subsequently erected thereon, such buildings are protected under the Control of Rent Ordinance by virtue of section 12(1)(*l*) of that Ordinance."

In the present case it is clear that the temporary building was built by Mat bin Bidin prior to 1944 and it was also used as a dwelling house by him and later by the respondents. In these circumstances I am of the opinion that this temporary building falls within the definition of "premises" under the Control of Rent Ordinance, 1956 and it is therefore protected by the Ordinance. Since this temporary building is protected by the Control of Rent Ordinance, 1956 the tenancy of the respondents can only be terminated by the provisions contained in section 12(1) of the aforesaid Ordinance. This is borne out by the finding of the learned judge in the case of *Veerapillai* v. *Ooi Swee Hoe, supra*, where it was held that the landlord of premises subject to the Control of Rent Ordinance failed in his application to recover possession of land because he had not first taken steps under section 12(1)(*l*) of the Control of the Rent Ordinance as a condition precedent to his application. Similarly, the appellant as landlord has failed to take any steps required of him by section 12(1)(*l*) of the Control of Rent Ordinance, 1956. In the circumstances, I am of the opinion that the appellant cannot succeed by invoking clause 2 of P.1 and the learned president was therefore right in rejecting the appellant's action for recovery of possession of land.

Since the appellant has failed to discharge the burden of proof which lay upon him on the main issue, I do not consider it necessary for me to deal with the other grounds of appeal. In the event, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Allen, Gledhill & Ball; Sault, Keith Sellar & Co.*

MACPHAIL & CO. (IPOH) LTD. v. OAM PARKASH

[O.C.J. (Chang Min Tat J.) February 24, 1969]
[Ipoh — Civil Suit No. 197 of 1964]

Contract — Speculative dealing in shares — Whether gaming or wagering.

In this action the plaintiff company a firm of share-brokers sued the defendant for the sum of $49,286.76 for the net loss incurred by them in discharge of the defendant's obligation to deliver the scripts of the shares he had agreed to sell through them. The defence